

REMARKS

An Office Action was mailed in the above-captioned application on August 1, 2008. Claims 1, 4, 5, 20 and 22-24 were pending in the application. Claims 1, 4, 5, 20 and 22-24 were rejected. This Amendment and Remarks document is submitted in response to said Office Action.

The Rejection of Claims 22-24 under 35 U.S.C. § 112, second paragraph

The Examiner has rejected Claims 22-24 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The second paragraph of Section 112 requires that the claims set out and circumscribe a particular area that applicants regard as their invention with a reasonable degree of precision and particularity.

Specifically, the rejection alleges that “therapeutically effective amount” in Claims 22-24 lacks antecedent basis in Claim 1. As suggested by the Examiner, Claim 1 has been amended to recite “therapeutically effective amount” in place of “therapeutic amount.”

In view of the foregoing amendments and remarks, the Examiner is respectfully requested to reconsider the rejection under 35 U.S.C. § 112, second paragraph.

Double Patenting

The Examiner has rejected Claims 1, 4, 5 20 and 22-24 as being unpatentable over Claims 1-23 of U.S. Patent No. 7,153,514. An obviousness-type double patenting rejection is appropriate when a claim merely defines an obvious variation of an invention claimed in a patent. M.P.E.P. § 804(II)(B)(1). A double-patenting rejection must rely on a comparison with the claims in an issued or to be issued patent. M.P.E.P. § 804(III).

A terminal disclaimer over U.S. Patent No. 7,153,514 is included herewith.

Closing Remarks

Applicant believes that the pending claims are in condition for allowance. Should there be any outstanding issues in this application, the Examiner is invited to call and discuss this case with the undersigned.

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